

## Health and Human Services

332.407

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

### Subpart 331.1—Applicability

#### 331.101-70 Salary rate limitation.

(a) Beginning in fiscal year 1990, Congress has stipulated in HHS appropriations acts and continuing resolutions that, under applicable NIH, SAMHSA, and AHRQ contracts, appropriated funds cannot be used to pay the direct salary of an individual at a rate in excess of the Federal Executive Schedule Level I.

(b) The Contracting Officer shall insert the clause in 352.231-70, Salary Rate Limitation, in NIH, SAMHSA, and AHRQ solicitations and contracts that exceed the simplified acquisition threshold when a cost-reimbursement, fixed-price level-of-effort, time-and-materials, or labor-hour contract is contemplated, including modifications of contracts of those types for projects that support extramural program activities. For purposes of this clause, for NIH: Projects that support extramural program activities are basic and applied research projects; and for SAMHSA and AHRQ: Projects that support extramural program activities are mission-related projects, exclusive of contracts for general support services.

#### 331.102-70 Pricing of adjustments.

The Contracting Officer shall insert the clause in 352.231-71, Pricing of Adjustments, in solicitations and contracts when a fixed-price contract is contemplated.

## PART 332—CONTRACT FINANCING

### Subpart 332.4—Advance Payments for Non-Commercial Items

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### Subpart 332.4—Advance Payments for Non-Commercial Items

#### 332.402 General.

(e) The HCA (non-delegable) shall determine whether an advance payment is in the public interest in accordance with FAR 32.402(c)(1)(iii)(A).

#### 332.403 Applicability.

All R&D contracts with educational institutions located in the United States shall provide for financing by use of advance payments, in reasonable amounts, unless otherwise prohibited by law.

#### 332.407 Interest.

(d) The HCA (non-delegable) shall make the determinations in FAR 32.407(d). The HCA may also approve interest-free advance payments for educational institutions and other non-profit organizations, whether public or private, performing work under non-profit contracts (without fee) involving health services, educational programs, or social service programs, such as the following:

(1) Community health representative services for an Indian Tribe.

(2) Narcotic addict rehabilitative services.

(3) Comprehensive health care services for Model Neighborhood programs.

(4) Planning and development of health maintenance organizations.

(5) Dissemination of information derived from educational research.

(6) Surveys or demonstrations in the field of education.

(7) Producing or distributing educational media for disabled persons including captioned films for the hearing impaired.

(8) Operation of language or area centers.

(9) Biomedical research and support services.

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(10) Research surveys or demonstrations involving the training and placement of health personnel and health professionals, and dissemination of related information.

(11) Surveys or demonstrations in the field of social service.

#### **332.409 Contracting Officer action.**

##### **332.409-1 Recommendation for approval.**

The Contracting Officer shall transmit the information in *FAR 32.409-1* (or *FAR 32.409-2*) to the HCA by memorandum.

#### **Subpart 332.5—Progress Payments Based on Cost**

##### **332.501 General.**

##### **332.501-2 Unusual progress payments.**

(a)(3) The HCA (non-delegable) shall approve an unusual progress payment.

#### **Subpart 332.7—Contract Funding**

##### **332.703-70 Funding contracts during a continuing resolution.**

(a) *Continuing resolutions.* A continuing resolution (CR) is a legislative measure enacted to keep existing Federal programs functioning, generally at minimal levels, after the expiration of prior fiscal year budget authority and until passage of regular appropriation acts by Congress.

(b) *Operating guidance.* Because the terms of CRs may vary, for each CR, specific operating guidance will be issued by the Office of the Assistant Secretary for Financial Resources (ASFR). This guidance will—

(1) Establish the availability of funds for existing and new projects or activities (consistent with the language of the CR);

(2) Identify any specific limits or constraints imposed; and

(3) Establish the authorized level and timing of obligations permitted.

(c) Contracting activities, in concert with program, budget and finance personnel, must carefully assess contract funding decisions to—

(1) Ensure compliance with HHS guidance regarding the specific terms of a CR;

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(2) Maintain essential operations and activities; and

(3) Guard against violations of the Anti-Deficiency Act—*see FAR 32.702*.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

#### **332.704 Limitation of cost or funds.**

*See* subpart 342.71, “Administrative Actions for Cost Overruns,” for procedures for handling anticipated cost overruns.

## **PART 333—PROTESTS, DISPUTES, AND APPEALS**

### **Subpart 333.1—Protests**

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333.102 General.

333.103 Protests to the agency.

333.104 Protests to GAO.

### **Subpart 333.2—Disputes and Appeals**

333.203 Applicability.

333.209 Suspected fraudulent claims.

333.211 Contracting Officer’s decision.

333.212 Contracting Officer’s duties upon appeal.

333.212-70 Formats.

333.213 Obligation to continue performance.

333.215-70 Contract clauses.

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### **Subpart 333.1—Protests**

#### **333.102 General.**

(g)(1) The OGC-GLD serves as the liaison for protests lodged with the Government Accountability Office (GAO); is designated as the office responsible for all protests within HHS; and serves as the notification point with GAO for all protests.

(2) Each contracting activity shall designate a protest control officer to serve as an advisor to the Contracting Officer and to monitor protests from the time of initial notification until the protest has been resolved. Contracting activities shall forward a copy of each appointment and termination of appointment of protest control officers through appropriate acquisition channels, including the HCA, to ASFR/OGAPA/DA and the Deputy Associate General Counsel, OGC-GLD.